

EN BANC

G.R. No. 250370 – Mayor Rovelyn Echave Villamor, *Petitioner*, v.  
Commission on Elections and Antonio Bello Viernes,  
*Respondents*.

Promulgated:

October 5, 2021

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*Christina - Opinio*

CONCURRING OPINION

LAZARO-JAVIER, J.:

I **concur** with Justice Rodil V. Zalameda on his *ponencia* to grant the present petition. I find, as the *ponencia* does, that Resolutions dated April 26, 2019 and November 27, 2019 of the Commission on Elections (COMELEC) in SPA Case No. 18-182 (DC) are tainted with *grave abuse of discretion* amounting to excess or lack of *jurisdiction*. Contrary to these Resolutions, there is **no substantial evidence** to support the claim that petitioner **had materially and intentionally misrepresented to deceive** that she satisfied the one-year residency required of candidates running for the local elective position of mayor.

SUMMARY

**First**, petitioner **fulfilled** all the **requirements** under Republic Act No. 9225 (RA 9225) (*Citizenship Retention and Re-acquisition Act of 2003*) in relation to Section 39<sup>1</sup> of Republic Act No. 7160 (RA 7160) (*Local Government Code of 1991*) to **qualify for, run, and eventually win** in the May 13, 2019 elections for mayor of Lagangilang, Abra.

**Second**, **change of residence or domicile** is essentially a matter of **intent** supported by **acts** confirming the *existence of the intent*. These acts occurred *prior to* or *after* the re-acquisition of Filipino citizenship. All these must be appreciated under **elementary rules** that jurisprudence has **long established**. COMELEC was seriously remiss in **not canvassing and applying** these rules.

**Third**, there is **no substantial evidence** on record to **show or lead to** the conclusion that petitioner committed a **deliberately false and deceptive representation** sufficient to grant the petition to cancel her certificate of candidacy (CoC).

<sup>1</sup> SECTION 39. Qualifications. – (a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the *sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan*, the district where he intends to be elected; **a resident therein for at least one (1) year immediately preceding the day of the election**; and able to read and write Filipino or any other local language or dialect.

**Fourth**, petitioner **re-established** her domicile in Lagangilang both by intent and acts *prior* to and *after* her repatriation as a Filipino citizen. Notably, **continued and uninterrupted actual bodily presence – or even substantial physical presence –** in Lagangilang is **not required** either under Section 39 of RA 7160 or the *Constitution*.

**Lastly**, given that the **attempt to disqualify** petitioner was **filed before the election** and was a **live issue before the electorate** of Lagangilang, **all doubts** should have been **resolved in favor** of petitioner's **qualification** after the people of Lagangilang themselves **overwhelmingly voted for her** as mayor in the May 13, 2013 elections.

With due respect, the void rulings of the COMELEC **disregarded the voice** of the electorate of Lagangilang. This is a **constitutional infirmity** that the Court **cannot and should not** allow.

### ANTECEDENTS

Petitioner was a **natural-born citizen** of the Philippines. In 2006, she **obtained permanent residency status** in the United States of America. In 2009, she **became a naturalized citizen** of this country. On June 19, 2018, she **reacquired her Filipino citizenship** under RA 9225.

Between **2009 and 2018**, petitioner **travelled back and forth** the Philippines and the United States. She applied for and was given a **community tax certificate** from Lagangilang. She **retained all the properties** she owned when she was naturalized as an American citizen and **acquired several other parcels of land** in the years **2013, 2016 and 2017**. In **2017**, she **built her house** in Lagangilang on the lot she had purchased in the same year for her **purpose of residing** there. This **house** has been her **recorded abode**. She **registered as a voter** in Lagangilang and **cast her vote** in the **May 14, 2018 barangay elections**.

After her repatriation, petitioner **filed her CoC for mayor** of this town. Private respondent **filed a petition to cancel her CoC** under **Section 74** in relation to **Section 78** of Batas Pambansa Blg. 881, as amended (*Omnibus Election Code of the Philippines*). Despite the petition, she was **voted overwhelmingly to this position** in the **May 13, 2019 local elections**.

### REASONS

**A. *The review power of the Court in this case.***

In reviewing this case, the Court has to determine whether the COMELEC **gravely abused its discretion** in ordering the **cancellation** of petitioner's CoC based on the alleged **material and intentional misrepresentation** allegedly found in her residency qualification for the position of mayor of Lagangilang.

Petitioner challenges the rulings of the COMELEC pursuant to Article VIII, Section 1 of the *Constitution*, invoking the exercise of the Court's power of judicial review, *viz.*:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction** on the part of any branch or instrumentality of the Government.

**Grave abuse of discretion** requires that the COMELEC **did not simply err** either in its appreciation of facts or in the application of the law **but that it decided the case in a manner patently outside the contemplation of the law.**

*Mitra v. Comelec*<sup>2</sup> explained that the appreciation and evaluation of evidence by the COMELEC is **not ordinarily reviewed** in a petition for *certiorari*. In **exceptional cases, however**, when the COMELEC **overstepped** the limits of its discretion to the point of being **grossly unreasonable**, this Court is constitutionally mandated to intervene to rectify such **grave abuse of discretion.**

Under Section 5, Rule 64, *Rules of Court*, the *factual findings of the COMELEC, if supported by substantial evidence*, shall be *final and non-reviewable*. **Substantial evidence** refers to that **amount of relevant evidence** as a **reasonable mind might accept** as adequate to support a conclusion, **even if other minds, equally reasonable**, might conceivably opine otherwise. This **limited authority** to review such factual findings means that the COMELEC's appreciation of the evidence is reviewed **only to determine** if the findings are **supported by substantial evidence.**

If substantial evidence exists, such findings and conclusions, **even if erroneous**, are **accorded respect** since these errors are merely **error of judgment**. On the other hand, if the determinations are **not based on substantial evidence**, the **resulting errors** mutate from errors of judgment to **errors of jurisdiction**. In this latter instance, the Court has the **constitutional duty to intervene and set aside** the assailed COMELEC decision for lack of jurisdiction.

The **burden of proof is upon private respondent** to establish his claim of **material and intentional misrepresentation** in his petition for cancellation.<sup>3</sup> It is **not petitioner's burden to disprove** this claim though she may adduce evidence as she did to **rebut** private respondent's evidence or submissions.

<sup>2</sup> 648 Phil. 165, 176 (2010).

<sup>3</sup> *Tecson v Commission on Elections*, 468 Phil. 421, 534 (2004).

The present case is one such instance in which **the Court has to intervene.**

Here, **instead of evaluating the probative value** of the evidence presented by petitioner, the COMELEC **abruptly concluded** that she had failed to re-establish her domicile in Lagangilang, *simply because* the **acts** indicative of her **intent to do so** were **done while she was still a naturalized American citizen** and **prior to her repatriation as a Filipino citizen on June 19, 2018.**

I concur in the *ponencia's* **rejection** of this ruling. In my respectful opinion, the ruling is **grossly unreasonable** – it is **unreasonable** because it **does not fall** within a **reasonable range of acceptable outcomes**, and such unreasonableness is **gross** because the ruling is **contrary not only** to the **elementary** legal principle that allows *balikbayans* to re-establish their domicile in the Philippines even as they retain their alienage<sup>4</sup> *but also* to the **summary nature** of a **cancellation petition** under Section 74 and Section 78 that **only allows the COMELEC** to rule on **patent material misrepresentations of fact** and not to make conclusions of law which are even contrary to jurisprudence.

In addition, **no substantial evidence** has been presented to support the conclusion of the COMELEC that petitioner committed a ***deliberately false and deceptive representation*** sufficient to grant the petition to cancel her certificate of candidacy (CoC). For *ignoring* the **elementary** legal principle that administrative findings must be based on **substantial evidence**, the ruling of the COMELEC is **grossly unreasonable** and **gravely abusive of discretion.**

On the other hand, petitioner **offered evidence** to prove her **intent to change her domicile** to and **establish it** in Lagangilang, and **to abandon** the United States as her place of residence. This she did by **acts** taking place both **prior to** and **after** she reacquired her Filipino citizenship. Her evidence **rebutted** private respondent's submissions and **precluded** him from **discharging his burden** to prove by **substantial evidence** his claim that petitioner committed a ***deliberately false and deceptive representation*** as to her residency qualification.

***B. Petitioner's compliance with the requirements of RA 9225 and the relation of RA 9225 to the residency qualification prescribed in Section 39 of RA 7160.***

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<sup>4</sup> *Poe-Llamanzares v. Comelec*, 782 Phil. 292 (2016).

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Section 2<sup>5</sup> and Section 3<sup>6</sup> of RA 9225 allow former natural-born Filipino citizens, who were subsequently naturalized citizens in a foreign country, to **reacquire Philippine citizenship** by taking an **oath of allegiance** to the Republic. Once the **oath of allegiance is taken**, the **right to enjoy full civil and political rights that attach to this citizenship follows**, subject to compliance with other requirements of the Constitution and applicable laws for the exercise of these rights.

Significantly, **no other step** is required under these laws, **except** for Filipinos with reacquired citizenship who –

- (i) **intend to vote** in Philippine elections, who **must** then **meet** the **requirements** under Section 1, Article V of the *Constitution*, Republic Act No. 9189 (*The Overseas Absentee Voting Act of 2003*) and other existing laws.
- (ii) **intend to run for public office**, who must then: (1) execute an **oath of renunciation**, and (2) **meet all of the qualifications** imposed by the *Constitution* and the law for holding the public office.

Section 5 (1) & (2) of RA 9225 is relevant on these points:

Section 5. Civil and Political Rights and Liabilities. — Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

(1) Those intending to exercise their right of suffrage must meet the requirements under Section 1, Article V of the Constitution, Republic Act No. 9189, otherwise known as “The Overseas Absentee Voting Act of 2003” and other existing laws;

(2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;

x x x x

The **qualifications for holding local elective office** are found in Section 39 of RA 7160:

<sup>5</sup> SECTION 2. Declaration of Policy. — It is hereby declared the policy of the State that all Philippine citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of this Act.

<sup>6</sup> SECTION 3. Retention of Philippine Citizenship. — Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic... Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

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SECTION 39. Qualifications. – (a) An **elective local official** must be a citizen of the Philippines, a registered voter in the barangay, municipality, city, province or, in the case of a member of the *sangguniang panlalawigan*, *sangguniang panlungsod*, or *sangguniang bayan*, the district where he intends to be elected; **a resident therein for at least one (1) year immediately preceding the day of the election**; and able to read and write Filipino or any other local language or dialect.

....  
(c) **Candidates for the position of mayor** or vice-mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day.

RA 9225 lays down the **process for reacquiring** Filipino citizenship and identifies the **rights** attached to **reacquired** Filipino citizenship. On the other hand, **Section 39** of RA 7160 imposes, among others, the **residency requirement** to qualify a **candidate** for public office.

RA 9225 **grants** the political and civil rights **to reside** in the Philippines and **to run** for public office upon reacquisition of Filipino citizenship, while Section 39 of RA 7160 **regulates** the **exercise** of this **political right to run in a local election** through, among others, the **residency requirement**.

The **reacquisition** of Filipino **citizenship** under RA 9225 **does not** by itself imply or establish the fact of **Philippine residency**. This is because the process and grant of reacquisition **does not require** any residency obligation. **Residency accrues as a right** upon one's reacquisition of citizenship under RA 9225, and is, thus, demandable as a result of the process; but the **fact of residency**, especially the **specific locus** of its existence, **must be claimed independently** of the reacquisition of Filipino citizenship.

In the present case, there is **no issue** that petitioner has reacquired Filipino citizenship under RA 9225. This process **granted** her the **right to reside** in the country. Whether she **has in fact exercised this right** depends on what she has done **both prior to** and **after** she reacquired her Filipino citizenship to re-establish her domicile. As regards her **right to run as a candidate** in the local elections, RA 9225 simply **opened the door** for her to exercise this right, but the **actual availability of this right** to her is based on her **compliance** with the requisites imposed by other laws, among them, a **year-long residency** criterion in the place she sought to be voted for under Section 39 of RA 7160.

**C. *Legal contemplation of residence.***

The term *residence* in Section 39 of RA 7160 is **synonymous** with **domicile**. Both concepts refer to the **individual's permanent home** or the **place to which, whenever absent for business or pleasure, one intends to return to**. They depend on the attendant facts and circumstances in confirming the individual's **intent and actions to carry out this intent**.

Domicile is classified into three, namely: (1) **domicile of origin**, which is acquired by every person **at birth**; (2) **domicile of choice**, which is acquired upon **abandonment** of the domicile of origin; and (3) **domicile by operation of law**, which the law attributes to a person independently of his or her residence or intention.

*Limbona v. Comelec*<sup>7</sup> held that **to effect a change of domicile or to acquire a domicile of choice, there must concur –**

- (i) residence or **bodily presence** in the new locality,
- (ii) a bona fide **intention to remain** there, and
- (iii) a bona fide **intention to abandon** the old domicile.

In other words, there must be **physical presence** at the new domicile, coupled with *animus manendi* in this new residence and *animus non revertendi* to the former residence.

There is **no specific unbending rule** governing the evaluation of the evidence on these requisites. This is because of the element of **intent** – an **internal** proposition determined from **both objective** and **subjective** circumstances. The **objective** circumstances *to prove intent* are **outside events** or **acts** that to a **reasonable person** would be indicative of **remaining** at the new residence and **abandoning** the old one. The **subjective** circumstances *to prove intent* pertain to the **meaning** given by the **petitioner** herself or himself to these **outside events** or **acts**.

But the issue of **residence** or **domicile** is determined not only from one's *objective* and *subjective intent* and the **actions** or **events** associated with this intent. We must also **account for the perspectives of applicable laws, rules, and regulations** *vis-à-vis intent* and *actions*, among them, the following **three basic rules** imposed by case law on **residency issues**:

- (i) an individual **must have a residence** or **domicile** somewhere;
- (ii) when **once established, it remains** until a new one is acquired; and
- (iii) an individual can **have but one** residence or domicile at a time.

Jurisprudence has **also clarified** that the **intent** and **acts** we examine in determining one's **new domicile of choice** are **not only** those occurring or present **at the time of** and **after** the reacquisition of Filipino citizenship **but also** those **prior to** such timeline.

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<sup>7</sup> 619 Phil. 226, 232 (2009).

Thus, in *Poe-Llamanzares*, the Court considered **preparatory acts** showing an **intent to establish a new domicile** even **before the reacquisition** of Filipino citizenship in **computing the period of residence**. In *Mitra*, the **incremental steps in establishing** a new domicile were **considered** in computing the **period when residency began**.

Further, while **physical presence**, along with *animus manendi et revertendi*, is an **essential requirement** for the acquisition of a domicile of choice, case law has **not required** such physical presence to be **unbroken**. To be considered a resident of a local government unit, the candidate is **not asked to stay** 24 hours a day 7 days a week and **never leave** the place for a full one-year period prior to the date of the election.

*D. No substantial evidence that petitioner committed a deliberately false and deceptive representation*

As may be gleaned from the assailed Resolutions, the COMELEC ordered the cancellation of petitioner's CoC **not on the basis of substantial evidence BUT** using **self-serving logic**.

According to the **logic** employed by the COMELEC, since **petitioner** was granted **permanent residency status** in 2006 and later **naturalized** as an American citizen in 2009, she **lost her domicile of origin**. It then became her **burden to prove** in the petition for cancellation proceeding that she had **re-established her domicile of choice** in Lagangilang, Abra a year prior to the May 2019 local elections. **Absent** this evidence, she would be **conclusively presumed** to have **materially and intentionally misrepresented the period of her residency** in Lagangilang that **she alleged in her CoC** so as to **deceive** the electorate and the COMELEC about her **residency qualification**. Unfortunately for her, the **COMELEC erroneously deemed** as **irrelevant** and, therefore, **rejected** the pieces of **evidence** she had offered since, according to the COMELEC, the **evidence all pertained** to her **intent and acts prior to** her re-acquisition of Filipino citizenship. As a result, the COMELEC held that the **conclusive presumption** of a **material, deceptive and intentional misrepresentation** in her CoC proved **substantially** this claim of private respondent.

To be sure, private respondent **also offered no evidence** to support his **claim** of a *material, deceptive, and intentional misrepresentation* in petitioner's CoC. **Instead, he relied merely on the fact** that petitioner **re-acquired Filipino citizenship** only in **June 2018**, *and* on his **legal conclusion** from this fact that she could **not have domiciled** in Lagangilang for **one year prior to the elections in May 2019**.

From *this manner of case presentation*, it is **obvious** that petitioner was **not able to discharge** his burden to prove his claim by **substantial evidence**.

It is **true** that **domicile of choice** must be **established** by the individual **who seeks** one – here, petitioner. **But** I have to **stress** that once that **choice has been made** or at least **alleged** in the individual's CoC, as petitioner did, the **burden of proof** is **upon private respondent**, as the petitioner in the CoC cancellation proceeding, to **prove by substantial evidence** the **material, deliberate, and deceptive misrepresentation** of petitioner's residency qualification in her CoC.

Essentially, as applied to this case, this **burden of proof** demands proving by substantial evidence the following **elements**:

- (i) petitioner **alleged** in the CoC a **residency period** that is **false**,
- (ii) she actually **did not comply** with the year-long residency requirement, and
- (iii) she **intentionally alleged** the **false** residency period in the CoC in order to **deceive** the COMELEC, other candidates, and the electorate of her **false eligibility** for the elective post.

As shown, the COMELEC **gravely abused** its discretion in deciding the petition for cancellation **merely** on the basis of **self-serving logic** and **not on evidence**, much less, **substantial evidence**. This is **contrary** to the **basic precept** that the **burden of proof** lies with the party **seeking** the cancellation of the CoC. Private respondent won in the cancellation proceeding **not because** of the **substantial evidence** he had offered, which he **had none**, but using a **self-serving and erroneous logic** that **dispensed with proof** on each of the **three elements** of his burden. The COMELEC **unreasonably aided** private respondent **by shifting** the **burden of proving** each of the **three elements** to herein petitioner. This, to repeat, is **grave abuse of discretion**.

The error of the COMELEC in the **allocation** of the burden is **compounded** by **another mistake** – when COMELEC **deemed** as **irrelevant** acts and intent taking place **prior to** the **re-acquisition** of herein petitioner's Filipino citizenship. This opinion **contradicts** the **elementary legal principles** expressed in *Poe-Llamanzares* and *Mitra* (see above), and **totally skewed** the **analysis in** and **outcome** of the cancellation proceeding, unfortunately to petitioner's prejudice.

To stress, there is **no substantial evidence** on record to **show** or **lead** to the conclusion that petitioner committed a **deliberately false and deceptive representation** sufficient to grant the petition to cancel her certificate of candidacy (CoC). In fact, as will be **shown below**, petitioner **actually** had at least a **year of residency in Lagangilang** before the May 2019 elections, and for this reason, the **erroneous statement** in her CoC about her 30 years plus residence in Lagangilang **could not have been intended to deceive** anyone that she **possessed** the **residency qualification** – because she **truly was qualified**, residency-wise.

All in all, COMELEC **gravely abused** its discretion when it granted private respondent's petition for cancellation, and as a result, cancel petitioner's CoC.

*E. Substantial evidence that petitioner has re-established her domicile of choice in Lagangilang, Abra.*

The COMELEC also **gravely abused its discretion** in ruling that petitioner *failed to re-establish* her domicile of choice in Lagangilang, Abra. This **grossly unreasonable** ruling is borne by the use of an **erroneous legal principle**, *i.e.*, that **acts and intent prior to** the reacquisition of Filipino citizenship are *irrelevant*.

Petitioner's acts and intent **prior to her re-acquisition** of Filipino citizenship on **June 19, 2018** are in fact **relevant** to prove her residence or **bodily presence** in Lagangilang, Abra, **bona fide intention to remain** there, and **bona fide intention to abandon** the old domicile. *Residency is established independently of citizenship*. A Filipino can become a permanent resident of the United States or any other country for that matter. In the same manner, a **foreigner can also obtain permanent residency status** in the **Philippines**.<sup>8</sup> *Poe-Llamanzares* and *Mitra* have **affirmed and applied** this legal principle in concrete cases.

Between **2009** and **2018**, petitioner **travelled back and forth** the Philippines and the United States. She applied for and was given a **community tax certificate** from Lagangilang. She **retained all the properties** she owned when she was naturalized as an American citizen and **acquired several other parcels of land** in the years **2013, 2016** and **2017**. In **2017**, she **built her house** in Lagangilang on the lot she had purchased in the same year for her **purpose of residing** there. This **house** has been her **recorded abode**. She **registered as a voter** in Lagangilang and **cast her vote** in the **May 14, 2018 barangay elections**.

While the **intent** behind the foregoing acts appeared to be **equivocal**, *if these acts were simply considered on their face or in isolation*, their **intent or purpose** became **obvious** and **categorical** when petitioner articulated her plan to **run in the local elections** in May 2019. The **acquisition** of several parcels of land and the **construction** of her house in Lagangilang, the **issuance** to her of a **community tax certificate** for Lagangilang, and her **registration as a voter** and **casting of vote** in the May 2018 barangay elections were **not intended for temporary entry**, *i.e.*, **investment or leisure purposes**, but in

<sup>8</sup> Section 13 (g), CA 613 as amended (The Philippine Immigration Act of 1940): "Under the conditions set forth in this Act, there may be admitted into the Philippines immigrants, termed "quota immigrants" not in excess of fifty (50) of any one nationality or without nationality for any one calendar year, except that the following immigrants, termed 'non-quota immigrants,' may be admitted without regard to such numerical limitations.... (g) A natural born citizen of the Philippines, who has been naturalized in a foreign country, and is returning to the Philippines for permanent residence, including his spouse and minor unmarried children, shall be considered a non-quota immigrant for purposes of entering the Philippines."

**furtherance of her decision to run in the May 2019 local elections.** By these **incremental** acts, she was slowly but surely making an imprint of her intention to **abandon** the United States as her domicile of choice and to **establish** and **remain** in Lagangilang as her **new** domicile of choice.

As later events would show, after her repatriation, petitioner **filed her CoC for mayor** of Lagangilang. Despite private respondent's petition to cancel her CoC, she was **voted overwhelmingly as mayor** in the May 13, 2019 local elections. She **assumed** this office and **has been discharging** its duties. These events have thus **cemented the reason, purpose, and intent** behind her acts in the years after 2009, especially in 2018. Her **intent**, as shown by her **acts**, was clearly **to be present** in Lagangilang and **to live and remain** there and **to abandon** the United States as her domicile.

This conclusion as regards petitioner's acts and her intent behind these acts is **supported** by the **legal principles** that "an individual **must have a residence or domicile** somewhere" and "an individual can **have but one** residence or domicile at a time."

Using these legal principles, it is simply **common sense to confirm** that after leaving the United States to take on an arduous political job in the Philippines, petitioner **must still have a domicile somewhere** and this **domicile can only be singular**. By **process of elimination**, since her domicile cannot be the United States anymore as she has **lost her meaningful connections** to it, *i.e.*, she has no work there as she may no longer be a citizen of that country after having renounced her American citizenship, Lagangilang, Abra has become *by her own choice* her **new place of residence**.

To conclude that petitioner has not re-established her domicile in Lagangilang, Abra despite the abandonment of her American domicile **would not only violate the rule** that *an individual must have a domicile or residence somewhere*. **More than anything**, it would **result in the absurd situation** where **returning and reacquiring Filipino citizens**, *despite having abandoned their foreign domicile*, would **not still be residents of the Philippines**.

The use of the foregoing **legal principles** would be **even more** appropriate in this case since **we are talking of an alleged shortfall of only 26 days** for petitioner to meet the one-year residency qualification for mayoral candidates – if we adopt the COMELEC's *simplistic and erroneous* reckoning date of June 19, 2018. For a **measly 26 days**, *after losing the United States as her domicile*, it would be **grossly unreasonable** for the Court to **deny** petitioner her **residency in Lagangilang** when the **legal principles** demand that "an individual **must have a residence or domicile** somewhere" and "an individual can **have but one** residence or domicile at a time." As these are what the **legal principles require**, assigning her **domicile of choice** in Lagangilang is **more consistent** with the **essence of substantial evidence** – in other words, this conclusion is something a **reasonable mind might be**

*willing to accept* as adequate to support a conclusion, **even if other minds, equally reasonable**, might conceivably opine otherwise.

Clearly, petitioner **re-established** her domicile in Lagangilang both by intent and acts *prior* to and *after* her repatriation as a Filipino citizen. While we *cannot point to any evidence* that she was in Lagangilang 24 hours a day, 7 days a week, 48 weeks in a year, the element of *physical presence* **does not call for continued and uninterrupted actual bodily presence** – or even *substantial physical presence*. It is enough that **she was there** at some points in time **coupled with the intention of establishing residence there and leaving the United States as the place she would be returning to**. In any event, it is **more likely than not** that between 2009 and 2018, especially in the years 2017 and 2018, she was **physically present** in Lagangilang for **at least 26 days to compensate** for the **missing number of days** between June 19, 2018 and May 13, 2019 to **complete the year-long residency qualification** for mayoral candidates **deemed insufficient** by the assailed COMELEC Resolutions.

The COMELEC therefore **gravely abused its discretion** in ruling that petitioner *failed to prove* that Lagangilang was her **new domicile of choice**.

A last point. Petitioner's statement in her CoC about her **30 years plus** of residency in Lagangilang is **erroneous** but **obviously not fatal**. It was a mistake done in **good faith**, and even if it were **not**, it is a statement that was **overcome by petitioner's own evidence** proving compliance with the yearlong residency requirement.

Indeed, COMELEC **cannot treat** the CoC as a binding and conclusive admission against petitioner. It could be given in evidence against her, yes, but it was by no means conclusive. There is precedent after all where a candidate's mistake as to period of residence made in a COC was overcome by evidence. In *Romualdez-Marcos v. COMELEC*,<sup>9</sup> the candidate mistakenly put seven (7) months as her period of residence where the required period was a minimum of one year. The Court thought of this statement as an **innocuous error**. The Court held that “[i]t is the fact of residence, not a statement in a certificate of candidacy which ought to be decisive in determining whether or not an individual has satisfied the constitution's residency qualification requirement.”

*F. Doubts resolved in favor of petitioner's qualification, and respect for the mandate of the people of Lagangilang who elected her as their mayor.*

Independently of the residence requirement issue, the Court **cannot and should not ignore** the undeniable fact that the people of Lagangilang, Abra made their own ruling when they **elected petitioner as their mayor** in

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<sup>9</sup> 318 Phil. 329-466 (1995).

the May 13, 2019 elections **despite** the **pervasive non-resident** label that her political opponents pinned on her.

The people of Lagangilang have spoken and chosen petitioner to be as she has been their mayor. She prevailed with an overwhelming majority of votes: 5,879 votes as against the 1,534 votes received by private respondent. Under this situation, **everyone** – including the Court – should **heed the majority's verdict** by resolving all doubts in favor of petitioner's eligibility. The law and the courts, including the Court, must accord petitioner every possible protection, defense and refuge, in deference to the popular will.

This **admonition** should have a **special ring** to this case because the **period of residency** upon which COMELEC cancelled her CoC is, by the COMELEC's faulty reckoning, only short of **26 days**.

In any action involving the possibility of a reversal of the popular electoral choice, the Court **must exert utmost effort to resolve the issues** in a manner that would **give effect to the will of the majority**. For it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority. To **successfully challenge a winning candidate's qualifications**, the petitioner **must clearly and convincingly demonstrate** that the **ineligibility is so patently antagonistic** to constitutional and legal principles; that overriding such ineligibility and consequently giving effect to the apparent will of the people would *ultimately create greater prejudice* to the very democratic institutions and juristic traditions that our *Constitution* and laws so zealously protect and promote. To repeat, even if we go by the COMELEC's own reckoning, petitioner was short of just **26 days** for her to allegedly qualify, residency-wise.

It is safe to assume that here, the **people of Lagangilang** have been **well acquainted** with **petitioner's background**, character and qualifications, among others, and that **she**, in turn, **has not been oblivious** to the **needs, difficulties**, aspirations, and potential for growth and development of Lagangilang and its people.

To be sure, these are the **concerns**, the *raison d'etre*, that **animates** elections and its **residency requirement**. These were the issues, too, that the electorate of Lagangilang voted upon when they elected petitioner. **Deference to the electorate's choice** would strengthen the very democratic institutions and juristic traditions that our *Constitution* and laws so zealously protect and promote.

#### **G. Conclusion.**

To finally reiterate, petitioner has **not committed any materially false and deceptive representation** in her CoC because private respondent **failed to prove this claim by substantial evidence** and also because petitioner had in fact been a resident of Lagangilang, Abra, for at least one year immediately preceding the May 13, 2019 local elections. She **could legally change her**

**domicile** to this country **as early as she wanted to**, though she was *still a naturalized American citizen*. She **indisputably acted** pursuant to this **right** and **intent to re-settle** in Lagangilang when she started to acquire properties, build a house, and register as a voter and vote, all towards **actualizing** the **not-so-easy** decision and commitment **to run and wage a serious campaign for mayor** of this town. No reason, therefore, exists to nullify her CoC on the basis of an alleged false material and deceptive representation.

For these reasons, I vote to **GRANT** the petition.

  
**AMY C. LAZARO-JAVIER**  
Associate Justice